

DECISION AND ORDER

Decision Issue Date Tuesday, April 10, 2018

PROCEEDING COMMENCED UNDER section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): JAE WOONG AN

Applicant: RUBINOFF DESIGN GROUP

Property Address/Description: 444 ELM RD

Committee of Adjustment Case File Number: 17 204444 NNY 16 MV

TLAB Case File Number: **17 255386 S45 16 TLAB**

Hearing date: Wednesday, March 28, 2018

DECISION DELIVERED BY G. Burton

APPEARANCES

Name	Role	Representative
Jae Woong An	Appellant	Christine Lee

INTRODUCTION

This was an appeal by the owner, Mr. An, of the refusal of the Committee of Adjustment (COA) to approve all of the variances requested to construct a new dwelling at 444 Elm Road in North York. The COA approved 10 variances, allowing for almost the entire proposed structure, but not the variances required under both applicable By-laws for the south side yard setback.

BACKGROUND

The property is located on the west side of Elm Road, east of Avenue Road and south of Highway 401, in the North York area. It is zoned RD (f9.0; a275) in the new City of Toronto Zoning By-law 569-2013 (the “New By-law”) and R7 under former North York By-law 7625 (the “North York By-law”). The proposed new two storey home was designed by Mr. Glenn Rubinoff of Rubinoff Design Group. He represented Mr. An at the COA, but could not do so before the Toronto Local Appeal Body (TLAB). Ms. Christine Lee, a recent law graduate, did so, and very ably.

MATTERS IN ISSUE

Given the examples of similar structures in the neighbourhood, and of recent COA approvals of nearby proposals with virtually the same setbacks, should this south yard setback not be approved, as well as the other variances that the COA did sanction?

JURISDICTION

For variance appeals, the TLAB must ensure that each of the variances sought meets the tests in subsection 45(1) of the Act. This involves a reconsideration of the variances considered by the Committee in the physical and planning context. The subsection requires a conclusion that each of the variances, individually and cumulatively:

- is desirable for the appropriate development or use of the land, building or structure;
- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law; and
- is minor.

These are usually expressed as the “four tests”, and all must be satisfied for each variance.

In addition, TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement (‘PPS’) and conform to (or not conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe (‘Growth Plan’) for the subject area.

Under s. 2.1(1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

EVIDENCE

These were the variances requested from the COA:

1. Chapter 10.5.40.10(5), By-law No. 569-2013

A minimum of 10 m. of the first floor must be within 4.0 m of the front main wall.
The proposed has an area of 5.34 m..

2. Chapter 10.20.40.70.(3), By-law No. 569-2013

The required minimum side yard setback is 0.9 m.
The proposed south side yard setback is 0.61 m.

3. Chapter 10.20.40.20.(1), By-law No. 569-2013

The permitted maximum building length is 17.0 m.
The proposed building length is 17.07 m.

4. Chapter 10.20.40.10(2), By-law No. 569-2013

The permitted maximum height of all side exterior main walls facing a side lot line is 7.5 m.
The proposed height of the side exterior main walls facing a side lot line is 8.68 m.

5. Section 14-B(9), By-law No. 7625

The maximum permitted building length is 15.3 m
The proposed building length is 17.4 m.

6. Section 6(30)a, By-law No. 7625

The maximum finished first floor height is 1.5 m.
The proposed first floor height is 1.79 m.

7. Section 14-B(5)(b), By-law No. 7625

The minimum required south side yard setback is 1.2 m.
The proposed south side yard setback is 0.62 m.

8. Section 6(9)(b), By-law No. 7625

Stairs are only permitted to project 2.1 m into the rear yard.
The proposed stairs project 2.16 m.

9. Section 14-B(8), By-law No. 7625

The maximum permitted building height is 8.8 m.
The proposed building height is 9.56 m.

10. Section 6(9)(f), By-law No. 7625

Porches and canopies are not permitted to project into the side yard more than what is permitted by the building: 1.2 m..

The proposed canopy and porch in the front yard are 0.61 m from the south side lot line.

The COA refused Variances 2 and 7 for the side yard setback. The two By-laws have slightly differing requirements for this setback. Ms. Lee stated that the side yard setback variances were indeed minor. There is very little mathematical difference in the by-law requirements and the setbacks requested. The more recent standard under the New By-law is more persuasive of Council's intent – 0.9 m required and 0.61 m sought, versus 1.2 m required and 0.62 m requested.

Ms. Lee tendered 6 decisions where the COA granted similar variances. Exhibit 2 is for 12 Dunblaine Avenue (a 2010 decision), wherein a side yard setback of 1.20 m was required and 0.61 m was granted. In Exhibit 3, 18 Dunblaine (2011), a side yard setback of 0.6 m was allowed under the North York By-law, which required 1.2 m as above. In the latter decision, both side yard setbacks were exceeded, whereas in the present application, the north side yard setback meets the By-law requirement.

Other decisions: Exhibit 4, 179 Haddington Avenue, in 2014 also allowed 0.61 m for a By-law requirement of 1.2 m. (there was an error here for the New By-law requirement, which should read 0.9 m and not 1.2 m). Exhibit 5 for 120 Felbrigg Ave. also permitted 0.6 m. where 1.2 m is required, as did Exhibit 6 for 454 Elm Road, also designed by Mr. Rubinoff. Exhibit 7 for 48 Haddington Ave. illustrates the approval of the setback again, as does 454 Elm, the "model" for this proposal, seen in the pictures in Exhibit 1.

Ms. Lee referred to Exhibit 1, photos entitled Existing New Construction on Elm, to illustrate how similar the lot sizes and home placements in the neighbourhood are to the proposed. In almost every case there is a very small distance between the homes, and most are new construction. A small side yard setback is the norm in the area, she stated. Even at present, there is only 0.3 m between the present home and the side lot line. The proposal would be an improvement as it would provide a bit more space at 0.61 m.

ANALYSIS, FINDINGS, REASONS

I have made a careful study of all of the materials before the COA as well as those in evidence before me. I am inclined to approve all the variances that the COA approved, as I agree with Ms. Lee that this proposal appears to be very similar to many in the neighbourhood. If built as proposed, it would be a very good "fit" as the Official Plan requires in a Neighbourhood designation, as this is. I will also approve the two variances refused by the COA, as the side yard setback is indeed minor.

The plans illustrate that the garage is at grade, a more desirable outcome from the perspective of the New By-law which discourages a three-storey design with many stairs to the first floor. While some of the requested variances could be said to be numerically large, they are not large in their possible impact. No neighbour showed

interest in the file, and I would have expected the neighbours to the south to have done so if they felt any adverse impact with the proposed setback. I find that the variances will have very little impact in their context.

I conclude that each of the variances, individually and cumulatively:

- is desirable for the appropriate development or use of the land, building or structure;
- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law; and
- is minor.

Similarly, this desirable rebuild constitutes appropriate redevelopment under the PPS and the Growth Plan.

I had mentioned the condition respecting plans imposed by the COA to Ms. Lee, informing her that I would impose a similar condition tying construction to these plans. This would be for the reasons set out in the memo from Planning Staff to the COA respecting the height of the exterior side walls. I also mentioned the recommendation from Urban Forestry, which the COA did not impose as had been requested. Because of the two trees mentioned in that Report, I would impose the two standard conditions for permits. Ms. Lee had no objections.

DECISION AND ORDER

The TLAB orders that the appeal is allowed, and that:

1. The variances to Zoning By-law No. 7625 as listed 5 through 10 above and listed in Attachment 1, are authorized.
2. The variances to Zoning By-law No. 569-2013 as listed 1 through 4 above and listed in Attachment 2, are authorized, contingent upon the relevant provisions of this By-law coming into force and effect.
3. The new detached dwelling shall be constructed substantially in accordance with the side elevations attached to the decision of the Committee of Adjustment, dated October 12, 2017 and attached hereto as Attachment 3. Any other variances that may appear on these plans but are not listed in the written decision are NOT authorized.
4. The Applicant shall submit the necessary application for permits to injure or remove trees according to the City of Toronto Municipal Code Chapter 813, Article II (Private Trees) and Article III (City-Owned Trees).

ATTACHMENT 1 – BY-LAW NO. 7625

5. Section 14-B(9), By-law No. 7625

The maximum permitted building length is 15.3 m
The proposed building length is 17.4 m.

6. Section 6(30)a, By-law No. 7625

The maximum finished first floor height is 1.5 m.
The proposed first floor height is 1.79 m.

7. Section 14-B(5)(b), By-law No. 7625

The minimum required south side yard setback is 1.2 m.
The proposed south side yard setback is 0.62 m.

8. Section 6(9)(b), By-law No. 7625

Stairs are only permitted to project 2.1 m into the rear yard.
The proposed stairs project 2.16 m.

9. Section 14-B(8), By-law No. 7625

The maximum permitted building height is 8.8 m.
The proposed building height is 9.56 m.

10. Section 6(9)(f), By-law No. 7625

Porches and canopies are not permitted to project into the side yard more than what is permitted by the building: 1.2 m..
The proposed canopy and porch in the front yard are 0.61 m from the south side lot line.

ATTACHMENT 2 – BY-LAW NO. 569-2013

1. Chapter 10.5.40.10(5), By-law No. 569-2013

A minimum of 10 m. of the first floor must be within 4.0 m of the front main wall.
The proposed has an area of 5.34 m..

2. Chapter 10.20.40.70.(3), By-law No. 569-2013

The required minimum side yard setback is 0.9 m.
The proposed south side yard setback is 0.61 m.

3. Chapter 10.20.40.20.(1), By-law No. 569-2013

The permitted maximum building length is 17.0 m.
The proposed building length is 17.07 m.

4. Chapter 10.20.40.10(2), By-law No. 569-2013

The permitted maximum height of all side exterior main walls facing a side lot line is 7.5 m.

The proposed height of the side exterior main walls facing a side lot line is 8.68 m.

ATTACHMENT 3

(PP. 4 AND 5, DECISION NOTICE – COMMITTEE OF ADJUSTMENT)

X 

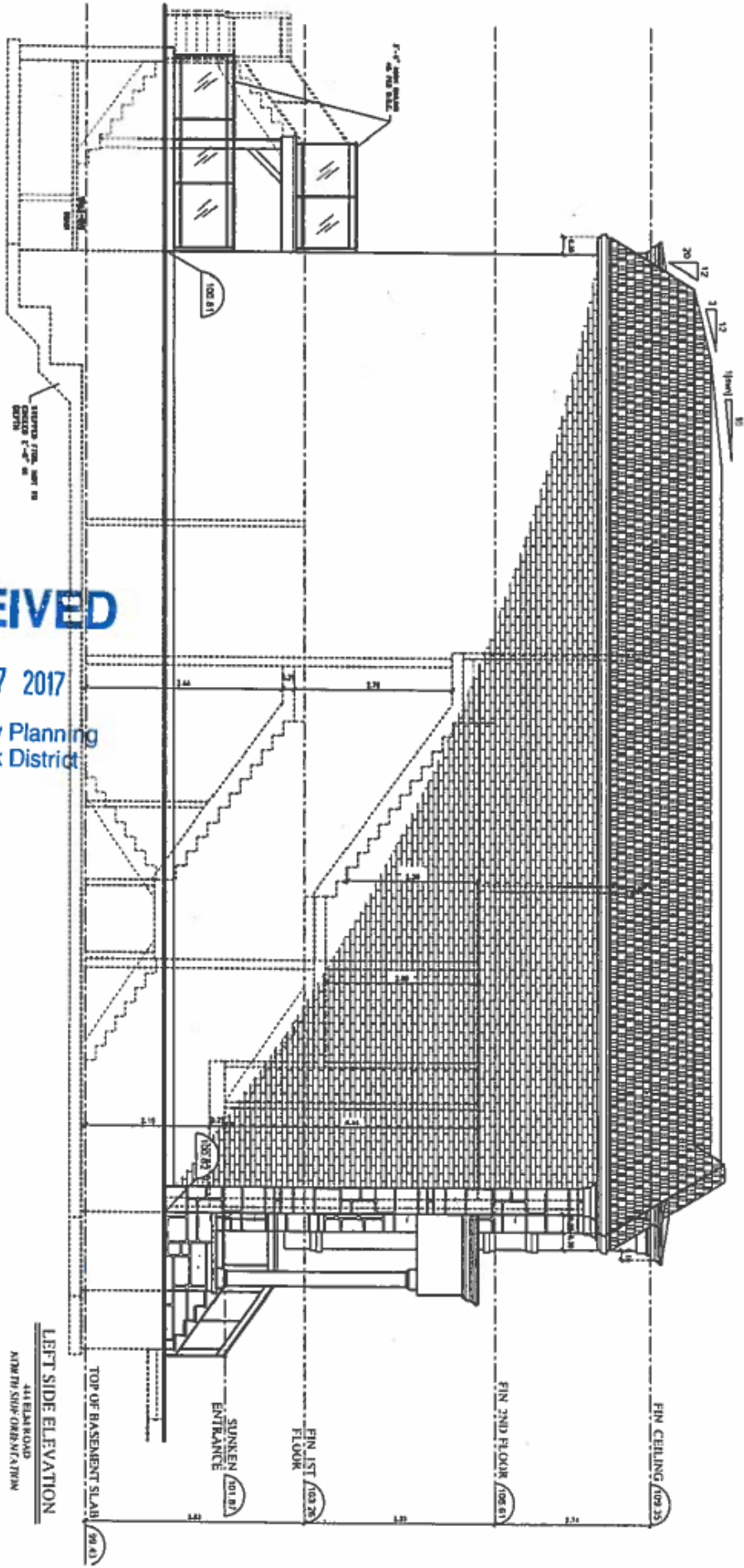
G. Burton

Panel Chair, Toronto Local Appeal Body

RECEIVED

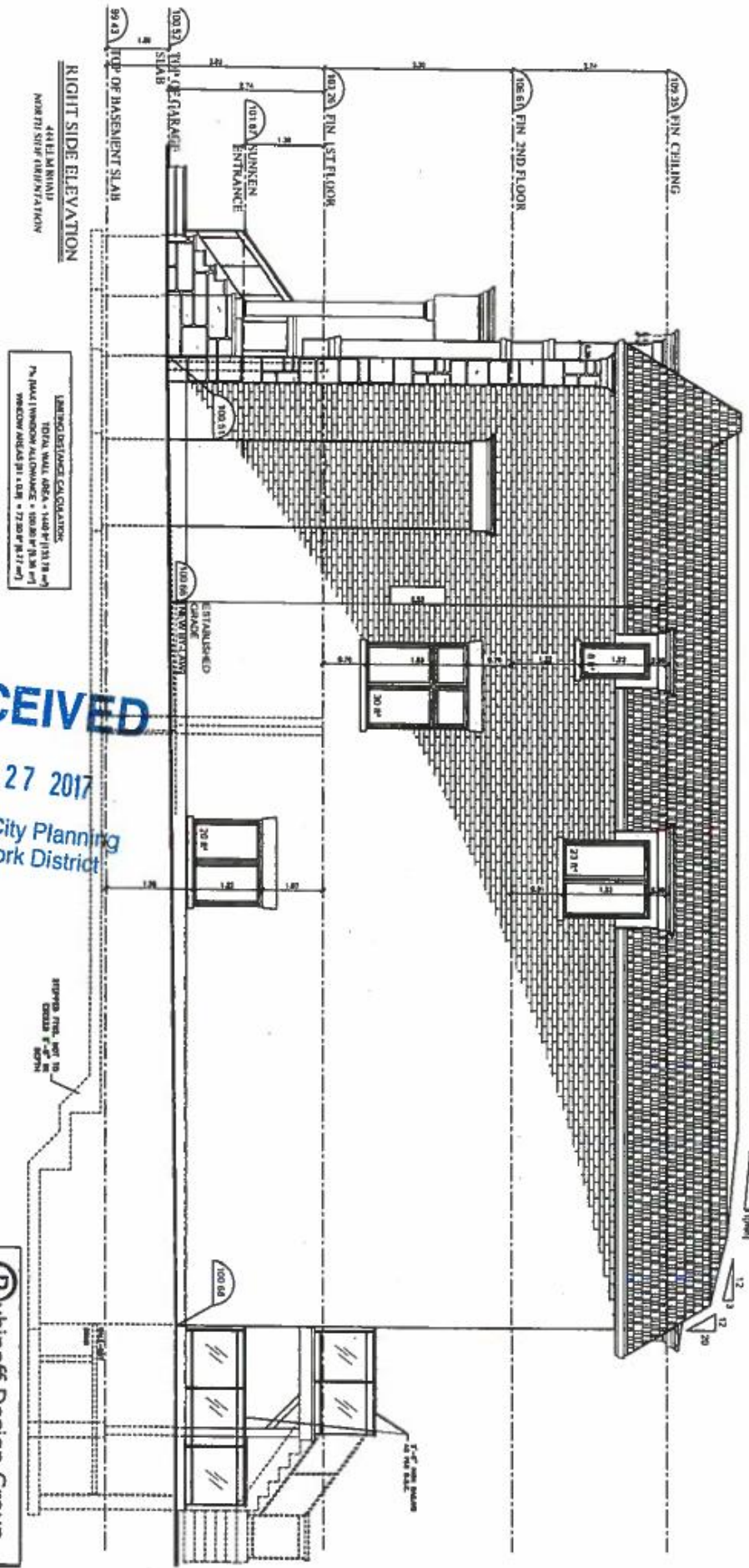
SEP 27 2017

Toronto City Planning
North York District



Rubinfoff Design Group
697 Mount Pleasant Road,
Toronto, Ontario M4S 2N4
TEL: 416-467-0222 FAX: 416-467-2731 EMAIL: info@rubinfoffdesign.com

SCALE : 3/8" = 1'-0" JULY / 21 / 2017



RIGHT SIDE ELEVATION
444 LAMARINA
NORTH YORK ORGANIZATION

LANDSCAPE CALCULATIONS
TOTAL WALL AREA = 1448.71 (131.19 sq ft)
TOTAL WINDOW AREA = 1048.71 (96.34 sq ft)
WINDOW WALL RATIO = 72.38%

RECEIVED
SEP 27 2017
Toronto City Planning
North York District

Rubinfoff Design Group
687 Mount Pleasant Road,
Toronto, Ontario M4S 2M4
TEL: 416-467-4037 FAX: 416-467-2751 EMAIL: info@rubinfoffdesign.com
SCALE: 3/8" = 1'-0" JULY / 21 / 2017